C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

NO: 500-06-000453-080

SUPERIOR COURT
(Class Action Division)

ANDRÉE MÉNARD

Class Plaintiff

v.

LINO P. MATTEO
-and-
PAUL D'ANDRÉA
-and-
B2B TRUST
-and-
DELOITTE LLP
-and-
BDO DUNWOODY S.R.L.
-and-
SCHWARTZ LEVITSKY FELDMAN S.R.L.

Defendants

-and-

ERNST & YOUNG INC., IN THE CAPACITY OF LIQUIDATOR OF SERVICES FINANCIERS PENSON CANADA INC.

Defendant in continuance of suit

-and-
JOSEPH PETTINICCHIO
-and-
LAURENCE HENRY
-and-
ANDRIS SPURA
-and-
LOWELL HOLDEN

Mis en cause

FONDS D'AIDE AUX ACTIONS COLLECTIVES

Mis en cause

APPLICATION FOR A CLASS ACTION SETTLEMENT ORDER AS PER THE COURT APPROVED PLAN OF COMPROMISE AND ARRANGEMENT
(Articles 585, 590 and 593 C.C.P., and section 17 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C 36)

TO THE HONOURABLE JUSTICE JEAN-FRANÇOIS BUFFONI, J.S.C., SITTING IN THE PRESENT CLASS ACTION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE CLASS PLAINTIFF RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. All capitalized terms referred to herein have the meanings ascribed thereto in the attached Schedule "A" Definitions;

2. The Class Plaintiff, Andrée Ménard, hereby respectfully requests that this Honourable Court issue an order in the Class Action (i) confirming that the CCAA Approval Order shall be binding and giving full effect against the parties designated in and part of the Class Action, whether as a class representative, class member, named defendant/respondent or mis-en-cause; (ii) declaring that the Plan is fair and reasonable and in the best interest of class members; (iii) removing the allegations and conclusions against the Settling Defendants; and (iv) terminating the Class Action against the Settling Defendants without costs.

II. THE CLAIMS OF THE CLASS PLAINTIFF AND OTHER MEMBERS

3. From 1993 to November 2005, Mount Real Corporation ("**MRC**") was a public company which issued and/or guaranteed the Promissory Notes issued by itself and its affiliated or related or formerly affiliated or related entities Gestion MRACS Ltd. ("**MRACS**"), Real Vest Investments Ltd. ("**Real Vest**") and Corporation Real Assurance Acceptation ("**RAAC**");

4. On November 9, 2005, Jean Robillard was appointed provisional administrator for MRC, and for MRACS, Real Vest and RAAC on January 24, 2006, by the Québec finance minister, to protect investors following a recommendation made by the *Bureau de décision et révision en valeurs mobilières* and an investigation conducted by the *Autorité des Marchés Financiers* which determined that illegal acts had been committed by the management, representatives and investment dealers of the companies who issued or distributed the Promissory Notes;

5. On February 27, 2006, bankruptcy orders were issued by the Superior Court of Québec against each of MRC, MRACS, Real Vest and on March 6, 2006, RAAC filed a voluntary assignment in bankruptcy and RCGT was appointed and continues to act as Trustee in each of the Bankruptcies for MRC, MRACS, Real Vest and RAAC;

6. On April 7, 2006, the Honourable Jean-Yves Lalonde, J.S.C. ordered the consolidation of the above Bankruptcies;

7. On November 8, 2008, Andrée Ménard, the Class Plaintiff herein, instituted the Class Action on behalf of all holders of Promissory Notes who lost their investment as a result of the fraud, which Class Action is pending against the Individual Defendants and the Settling Defendants;

8. On August 25, 2011, as rectified on October 7, 2011 the Honourable Jean-François Buffoni, J.S.C. authorized the Class Action against Lino P. Matteo, Paul D'Andrea, Deloitte, BDO, SLF, B2B and Penson with respect to the following Class:

> *"Toutes les personnes qui en date du 9 novembre 2005 étaient propriétaires de billets à ordre émis par les sociétés Corporation Mount Real, Gestion MRACS Ltée, Investissements Real Vest Ltée et Corporation Real Assurance Acceptation";*

9. Following the authorization judgment and the Notice Plan ordered thereunder, no exclusions or opt-outs were filed within the prescribed time period;

10. During the week of July 11, 2016**,** a case settlement conference was presided by the Honourable Louis Lacoursière, J.S.C., with respect to this Class Action. Class Plaintiff and Ms. Janet Watson attended this settlement conference;

11. As a result of this conference, the Class Plaintiff and the Settling Defendants agreed on the terms of a total settlement of the Class Action with respect to the Settling Defendants only, which is conditional upon the filing of the Plan with respect to the Debtors pursuant to the CCAA, which is to include full and final releases by all third parties in favour of the Released Parties in addition to bar orders and injunctions prohibiting the institution or continuation of legal proceedings against the Released Parties, the whole to be approved by the statutory majority of creditors and the Court;

12. As of July 15, 2016, a Confidentiality Agreement was entered into which set forth the amount of the contribution of each of the Settling Defendants and other matters;

13. On August 24, 2016, RCGT, with the authorization of the inspectors to the Bankruptcies, accepted to give effect to the settlement and agreed to file an application for the issuance of an initial order in respect of the Debtors under the CCAA with the CCAA Court in which it requested to be appointed as Monitor in connection with the CCAA Proceedings;

14. The Penson Agreement was signed by each party respectively on October 3 and 5, 2016 (subject to approval of the court in the liquidation proceedings of Penson, which approval was obtained pursuant to an order of Honourable Robert Mongeon J.S.C., dated October 18, 2016 in Court record 500-11-044039-135);

15. The Class Plaintiff, the Trustee and the Settling Defendants entered into the Plan Support Agreement to give effect to the Penson Agreement and the Confidentiality Agreement, and to further determine the terms of the settlement and the conduct of the CCAA Proceedings;

16. The Parties to the Plan Support Agreement intended that the Plan would incorporate the terms of the Plan Support Agreement and would be approved in the CCAA Proceedings,

and that the Plan Support would be given effect through the Plan by the CCAA Approval Order and Class Action Order;

III. THE CCAA PROCEEDINGS

17. On December 1st, 2016, the Initial Application filed by the Trustee in the CCAA Proceedings was granted by the CCAA Court as well as the issuance of the Claims and Meeting Order setting forth the filing of the Plan, the Claims Procedure, the Claims Resolution Process, the Meeting of Creditors and the notice of hearing of the Approval Orders;

18. As part of the Initial Order, the CCAA Court stayed proceedings against the Respondent Debtor Companies, including the Class Action;

19. However, the CCAA Court also granted Class Plaintiff's motion to be appointed as the representative of the Class in the CCAA Proceedings. As a result, Class Plaintiff was able to attend and participate in each step of the CCAA Proceedings leading to the approval hearing;

20. The filing of the Plan was conditional to the concurrent issuance by the CCAA Court of the Initial Order in respect of the Debtors pursuant to the CCAA;

21. In effect, the aforesaid Plan Support Agreement is conditional upon obtaining for the Released Parties appropriate releases, bar orders and the Injunction enforceable in Canada and elsewhere as may be required;

IV. NOTICES TO CLASS MEMBERS

22. Since the Initial Order, the Monitor has complied with all his duties and obligations, including those under the CCAA and pursuant to the Initial Order and the Claims and Meeting Order, as further detailed in the Monitor's Report to the Court on the sanction of the Plan of Compromise and Arrangement (the "**Monitor's Report**"), a copy of which will be filed at the hearing;

23. On December 8, 2016, the Monitor posted on the Website a notice to the Creditors of the Initial order in French and in English, copies of which are communicated herewith as **Exhibit R-1**, *en liasse*;

24. The Monitor determined in conjunction with Class Counsel the amount of each Class Action Claim, prepared the Creditors' List of Known Creditors, a copy of which is communicated herewith as **Exhibit R-2**, and posted same on the Website;

25. The Monitor prepared the required documents for the Notice to Creditors, all of which were duly uploaded on the Website on December 9, 2016 in conformity with the Claims and Meeting Order. Each of these documents could be easily downloaded from the Website;

26. A report prepared by the Monitor to the Creditors setting forth his recommendations to the Creditors regarding the acceptance of the Plan was also posted on the Website within the same time period and sent to Creditors with the above-mentioned package of documents. A copy of these recommendations is communicated herewith as **Exhibit R-3***, en liasse*;

27. In addition to the publication referred to in the above paragraph, the Monitor has sent, by regular mail or e-mail, to each Known Creditor, a copy of the Plan, the Notice to Creditors, the Creditors' Instructions, the Proof of Claim, the proxy form and the voting letter within twenty (20) days of the Claims and Meeting Order;

28. In addition to the notices referred to above, the Monitor also sent, by regular mail or email, a copy of the Creditors' Instructions and the Proof of claim, the proxy form and the voting letter to each Person who notified the Monitor, in writing before the Claims Bar Date, of a possible Claim and to any other Person who requested these documents before the Claims Bar Date, within twenty (20) days of this notification or request;

29. Class Counsel took numerous measures to inform all Class Members of the Plan and the Bar date. Class Counsel issued several emails to registered Class Members throughout December 2016 to February 2017;

30. Class Counsel, with the help of the Monitor, held an information meeting on January 23, 2017, where they presented the Plan and explained the claim's process. After the presentation, Class Counsel were available to answer the Class Members' questions on their specific case and to help Class Members complete their forms;

31. Class Counsel also paid for the publication of notices in the *Journal 24H* and in the *Metro* on February 1, 2017, copies of which are communicated herewith as **Exhibit R-4**, *en liasse*;

32. Class Counsel also gave several radio and TV interviews, such as a radio interview on Radio-Canada Sherbrooke, a televised interview on CTV and a televised interview on RDI;

33. Class Counsel further sought to reach individually all the 43 Class members for which the Monitor had received information that the Claim package had not been sent at the right address by hiring Melissa data to obtain the new addresses of Class Members which had moved and provided their new address to Canada Post. This measure identified two Class Members which had moved and hadn't provided their new address to the Monitor or Class Counsel;

34. After all these measures had been taken, Class Counsel tried to locate the 109 Members which had never provided any coordinates to the Monitor or Class Counsel and those who's coordinates were no longer valid. Class Counsel called all the people with the same name and surname in the White pages. As a result thereof, 28 additional Class Members were identified;

35. As of the Claims Bar Date, the Monitor had received 1070 Proof of Claims for $107 929 400.96 and 906 voting letters confirming the overwhelming support of the Creditors in favour of the Plan by creditors with a total $91 091 938.56 dollar value of claims in Ordinary Claims;

V. APPROVAL OF THE PLAN

36. The Meeting of Creditors was held on March 14, 2017 at 10:00 a.m. in Montreal, and conducted, in the manner provided for in the Claims and Meeting Order. A total of 85 Creditors attended this meeting;

37. The Plan was approved by the statutory majorities required for approval of the Plan by Creditors with Proven Claims under the CCAA and the Plan, by a vote in favour of the Plan by 981 creditors with a $98 708 699 dollar value of claims in the Ordinary Claims. Only two creditors with combined claims of $209 536 voted against the Plan as further detailed in the Monitor's Report. This represents an approval of 99,8 % in number of votes as well as in dollar value;

38. The Class Plaintiff also voted in favour of the Plan, having concluded that the Plan is fair, reasonable and in the best interests of the Class Members;

39. Class Counsel and Class Plaintiff submit to this Honourable Court that the Plan provides substantial relief and benefits to the Class Members in light of the risks that would arise from continuing the Class Action against the Settling Defendants;

40. The proposed Plan is fair, reasonable and in the interest of Class Members for the following reasons:

    a) The Plan has received an overwhelming support from the Class Members with more than 99 % of votes in favour;

    b) Mount Real is a Ponzi scheme: its capacity to pay interest to existing Class Members came from its ability to entice new Class Members to invest in Mount Real's fraudulent scheme. The Plan hence provides that Class Members are entitled to share the Class action Funds for Distribution on the basis of their Net Capital, that is the amount in capital they initially each invested without any interest thereon, less any interest received from Mount Real over the years;

    c) The Net Capital basis for distribution allows for the elimination of inequalities amongst members which had obtained interest rates varying between 8,5 % and 11 % among Members as well as varying over the years;

    d) The Plan provides for a fair and expeditious process to contest the amount in Net Capital which was attributed to each Member;

e) The Plan also provides for a fair and expeditious process to assess whether or not some Class members should be excluded from the distribution process, namely given their involvement in and knowledge of the operation of the Ponzi scheme;

f) The Monitor will distribute the Settlement Consideration to the Class Members on a pro rata basis according to the Class Action Claims. Only Class Members are entitled to receive a distribution from the Settlement Consideration;

g) On the basis of the information currently available, the Class Members will receive approximately 50% of their Net Capital after deducting Class Counsel's legal fees (this percentage may vary depending on the excluded claims and the revised claims);

h) The Plan provides for a fair and expeditious Distribution once it is approved by the CCAA Court and the Class Action Court, and the Monitor shall make distributions to Class Members 45 days following the Plan Implementation Date;

i) The proposed Plan is also in the best interest of the Class Members given the fact that Class Counsel advance a novel theory of law with the risk of the Class Action being dismissed on the merits after a long and costly trial;

j) Even if the Class Action is successful on the merits, there is still a risk that not all victims of the fraud could be entitled to compensation depending on the moment where the Settling Defendants would be found to be at fault;

k) Furthermore, even if the Class Action is successful on the merits, Class Members would not be receiving any money for several years. This is an important consideration since most of the Class Members are elderly people. At this time, 127 Proof of claims were filed by estate executors or heirs on behalf of deceased Class Members;

l) The Plan provides that the Class Action may continue against the Defendants other than the Settling Defendants;

41. The Plan provides Class Members substantial and tangible benefits. Class Members are expected to receive from the Plan approximatively 50 % of their Net Capital once Class Counsel Fess and legal fees are paid. This compares advantageously to other settlements reached and approved in similar files, such as Norbourg and Earl Jones;

42. The Plan also provides for the Class Counsel Fees equal to twenty percent (20 %) of the Settling Defendants' Consideration received by the Monitor, plus disbursements relating to the Class Action and the CCAA Proceedings, plus applicable taxes thereon;

43. Class Counsel submit to this Honourable Court that Class Counsel Fees are fair and reasonable for the following reasons;

a) The fees were agreed to by the Class Plaintiff as part of the initial mandate given in the Class Action in 2008, a copy of which is communicated herewith as **Exhibit R-5**;

b) Class Counsel have taken substantial risk in initiating and pursuing this litigation, *inter alia* because they are advancing a novel theory of law;

c) Over the last 8 years, Class Counsel have invested over 11 000 hours amongst both firms for a total value of over 5 million dollars in leading this very complex litigation. Class Counsel, with the help of the *Fonds d'aide aux actions collectives*, further financed the Class Action in over 200 000 $ in expenses. Details of the hours and expenses will be provided at the approval hearing under seal;

d) Class members will still recover a substantial amount of their initial investments in Mount Real once the Class Counsel Fees have been deducted and that is without having to disburse any money;

e) The fees will be divided among both firms which lead the Class Action. There were initially three firms leading this Class Action, Lauzon Bélanger Lespérance, Trudel & Johnston and Belleau Lapointe. The first two merged in May 2015 to form Trudel Johnston & Lespérance;

f) Class Counsel are two (2) firms specialized in class actions which cumulate over 140 years of experience in class actions. They have extensive expertise in handling complex litigation;

g) The settlement process was made more complex by the fact that the settlement was constructed under the CCAA, law which is newly utilized in class actions;

44. Notwithstanding the appointment of the Class Plaintiff as representatives of the Class in the CCAA Proceedings, pursuant to the Representation Order, Class Members were afforded the opportunity to express their independent views and vote against the Plan if they were so inclined;

45. On March 14, 2017, the Class Members voted in favour of the Plan which included the Class Counsel Fees;

46. The Plan, and the Plan Support and Settlement Agreement are the result of lengthy, good faith, adversarial, and arm's length negotiations. Class Counsel and Class Plaintiff submit to this Honourable Court that the product of these negotiations is fair and reasonable as well as in the best interests of Class Members;

VI. SETTLEMENT OF THE CLASS ACTION UNDER THE PLAN

47. The present application should be heard only if and once the CCAA Approval Order has been issued by the CCAA Court;

48. The Class Plaintiff and the Parties have agreed to the terms of the Plan, subject to the issuance by this Honourable Court of the Class Action Order, without any admission of liability whatsoever by the Settling Defendants and for the sole purpose of resolving the dispute between the Parties;

49. The Class Action Order sought herein by the Class Plaintiff is an order to be issued in the Class Action (i) confirming that the CCAA Approval Order shall be binding and giving full effect against the parties designated in and part of the Class Action, whether as a class representative, class member, named defendant/respondent or mis-en-cause; (ii) declaring that the Plan is fair and reasonable and in the best interest of the Class Members; (iii) removing the allegations and conclusions against the Settling Defendants; and (iv) terminating the Class Action against the Settling Defendants without costs.

50. As part of the CCAA proceedings, the Settling Defendants have contributed the aggregate sum of $43,236,431.13 towards the Settling Defendants' Consideration, which is intended to compensate the Class Members represented by the Class Plaintiff;

51. In exchange for the Settling Defendants' Consideration, the Plan requires comprehensive, definitive and irrevocable releases for all Settling Defendants and Released Parties;

52. The implementation of the Plan is conditional on the granting of the order sought herein;

53. All of the materials disseminated and made available to Class Members as well as all future materials, as the case may be, were and will be drafted in French and in English;

54. The Class Action will continue against the Defendants other than the Settling Defendants;

55. Considering the foregoing, the Class Action Order sought herein should be issued by the Court.

PAR CES MOTIFS, PLAISE AU TRIBUNAL :

ACCUEILLIR la présente demande;

ORDONNER ET DÉCLARER que, pour l'application de ce jugement, les définitions énoncées à l'Annexe A du Plan, s'appliquent

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present application;

ORDER AND DECLARE that for the purposes of this judgment, the definitions contained in Schedule A of the Plan, shall apply and are et y sont incorporées par renvoi;

incorporated by reference;

DÉCLARER que l'ensemble du Plan fait partie intégrale du présent jugement et qu'il est juste et raisonnable et dans l'intérêt des membres;

DECLARE that the Plan is an integral part of this judgment and that it is just and reasonable and in the interest of Class Members;

APPROUVE la convention d'honoraires liant les Procureurs du Recours collectif et la Représentante.

APPROVE the fee agreement between Class Counsel and the Class Plaintiff.

DÉCLARE que les Procureurs du Recours collectif ont droit à des honoraires extrajudiciaires équivalant à 20% des sommes recouvrées et les déboursés encourus, en plus des taxes applicables.

DECLARES that Class Counsel are entitled to extrajudicial fees equivalent to 20% of the sums recovered and disbursements incurred, plus applicable taxes thereon.

ORDONNER ET **DÉCLARER** que l'Ordonnance d'approbation sous la LACC lie les Parties, incluant toutes celles désignées dans le Recours Collectif, que ce soit en tant que Représentant du Groupe, Membres du Groupe, Intimées/ Défendeurs nommés ou mise-en-cause, et, de plus, **ORDONNER** ET **DÉCLARER** que les Parties et les Membres du Groupe se conforment aux termes et conditions prévus au Plan;

ORDER AND **DECLARE** that the CCAA Approval Order is binding and has full effect against the Parties, including those designated in the Class Action, whether as a Class Representative, Class Member, named Respondent/ Defendant or mise-en-cause, and **ORDER** AND **DECLARE** that the Parties and the Class Members shall abide by the terms and conditions of the Plan;

ORDONNER ET **DÉCLARER** qu'à la Date de Mise en Oeuvre du Plan, (i) les allégations formulées et les conclusions recherchées contre les Défendeurs Participants ne feront plus partie du Recours Collectif, et (ii) le Recours Collectif sera réglé et terminé à toutes fins que de droit contre les Défendeurs Participants, sans frais;

ORDER AND **DECLARE** that on the Plan Implementation Date, (i) the allegations made and the conclusions sought against the Settling Defendants shall no longer form part of the Class Action, and (ii) the Class Action shall be settled and terminated as against the Settling Defendants, without costs;

ORDONNER aux Procureurs du Recours collectif de se conformer à la *Loi sur le Fonds d'aide aux actions collectives* et de retenir sur tout reliquat le pourcentage prévu au *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives* au bénéfice du Fonds d'aide aux actions collectives.

ORDER Class Counsel to comply with *the Act Respecting the Fonds d'aide aux actions collectives* and to retain from any balance the percentage provided for in the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives* for the benefit of the Fonds d'aide aux actions collectives.

LE TOUT, sans frais.

THE WHOLE without costs.

Montreal, March 31, 2017

Trudel Johnston & Lespérance

Trudel Johnston & Lespérance
Attorneys for Class Plaintiff Andrée Ménard

Montreal, March 31, 2017

Belleau Lapointe

Belleau Lapointe
Attorneys for Class Plaintiff Andrée Ménard

AFFIDAVIT OF ANDRÉE MÉNARD

I, the undersigned, **Andrée Ménard**, domiciled for the purposes hereof at 2095, chemin Poissant, Sutton, Québec, J0E 2K0, solemnly declare as follows:

1. I am the Class Plaintiff and the applicant on the *Application for a Class Action Settlement Order as per the Court Approved Plan of Compromise and Arrangement*;

2. All the facts alleged in the foregoing *Application for a Class Action Settlement Order as per the Court Approved Plan of Compromise and Arrangement* are true.

AND I HAVE SIGNED

ANDRÉE MÉNARD

SWORN TO before me in Montreal, this 31 day of March 2017

Commissioner of Oaths for the Province of Quebec

Commissaire à l'Assermentation pour le district judiciaire de Montréal
ADRIANA MINICHIELLO
191077

AFFIDAVIT OF GABRIELLE GAGNÉ

I, the undersigned, **Gabrielle Gagné**, domiciled for the purposes hereof at 750 Côte de la Place d'Armes, Suite 90, Montreal, Quebec, H2Y 2X8, solemnly declare as follows:

3. I am one of the Class Counsel at Trudel Johnston & Lespérance working on the Class Action;

4. I have been involved in the implementation of the claims process with Class Members;

5. All the facts alleged in the foregoing *Application for a Class Action Settlement Order as per the Court Approved Plan of Compromise and Arrangement* are true.

AND I HAVE SIGNED

GABRIELLE GAGNÉ

SWORN TO before me in Montreal, this 31 day of March 2017

Commissioner of Oaths for the Province of Quebec

Commissaire à l'Assermentation pour le district judiciaire de Montréal
ADRIANA MINICHIELLO
191077

AFFIDAVIT OF JEAN GAGNON

I, the undersigned, **Jean Gagnon**, trustee, domiciled for the purposes hereof at 600 de la Gauchetière West Street, Suite 1900, Montreal, Quebec, H3B 4L8, solemnly declare as follows:

6. I am the trustee to the bankruptcy estates of each of the Debtor Companies herein and the duly authorized representative of the Applicant and Proposed Monitor;

7. All the facts alleged in the foregoing *Application for a Class Action Settlement Order as per the Court Approved Plan of Compromise and Arrangement* are true.

AND I HAVE SIGNED

JEAN GAGNON

SWORN TO before me in Montréal, this
31 day of March 2017

Commissioner of Oaths for the Province
of Québec

COMMISSAIRE À L'ASSERMENTATION
LUCIE PAQUETTE
#145 731
POUR LE QUÉBEC

NOTICE OF PRESENTATION

TO : CLASS ACTION DISTRIBUTION LIST and the Fonds d'aide aux actions collectives

TAKE NOTICE that this *Application for a Class Action Settlement Order as per the Court Approved Plan of Compromise and Arrangement* will be presented for adjudication before the Honourable Jean-François Buffoni of the Superior Court of Quebec in room 5.15 in the Montreal Court House, 1 Notre-Dame East, Montreal, on **April 26, 2017** at 9:30 or as determined by the Court and to be subsequently communicated to counsel.

Montreal, March 31, 2017

Trudel Johnston & Lespérance

Trudel Johnston & Lespérance
Attorneys for Class Plaintiff Andrée Ménard

Montreal, March 31, 2017

Belleau Lapointe

Belleau Lapointe
Attorneys for Class Plaintiff Andrée Ménard

APPENDIX A

DEFINITIONS

1. "**Applicant**" means the Trustee in its capacity as trustee of each of the estates of the Debtors.
2. "**Applicant's Counsel**" means Dentons Canada LLP as counsel retained and instructed by RCGT to act on its behalf in the CCAA Proceedings to give effect to the Plan Support Agreement.
3. "**Approval Date**" means the date on which the Approval Orders become Final Orders. If the Class Action Order and the CCAA Approval Order become Final Orders on different dates, the Approval Date is the latest date on which any of the Class Action Order or CCAA Approval Order becomes a Final Order.
4. "**Approval Orders**" means the Class Action Order and the CCAA Approval Order, collectively.
5. "**B2B**" means B2B BANK as the successor to B2B TRUST, with a place of business at 1981 McGill College Avenue, 20th Floor, Montreal, Quebec H3A 3K3.
6. "**B2B Consideration**" means the amount to be paid by B2B set forth in the Confidentiality Agreement.
7. "**Bankruptcy or Bankruptcies**" means, individually or collectively as the context requires, the bankruptcy proceedings for MRC in the Superior Court of Québec (Commercial Division) file bearing no. 500-11-027031-059, the bankruptcy proceedings for MRACS in the Superior Court of Québec (Commercial Division) file bearing no. 500-11-026937-058, the bankruptcy proceedings for Real Vest in the Superior Court of Québec (Commercial Division) file bearing no. 500-11-027506-068 and the bankruptcy proceedings for RAAC in the Superior Court of Québec (Commercial Division) file bearing no. 500-11-027632-062 which have been consolidated pursuant to an Order of Honourable Jean-Yves Lalonde, J.S.C. dated April 7, 2006.
8. "**Bankruptcy Consideration**" means the amount available for distribution in the Bankruptcy estates on the Approval Date, net of the Trustee's fees and disbursements and applicable taxes thereon, as approved under the provisions of the BIA.
9. "**Bankruptcy Loan**" means the amount outstanding on one or more loans made by the Trustee to Class Counsel for the purpose of funding disbursments in the Class Action.

10. "**BDO**" means BDO Canada LLP, (formerly known as BDO Dunwoody LLP) a limited partnership with a place of business at 1000, de la Gauchetière Street West, Suite 200, Montreal, Québec H3B 4W5.

11. "**BDO Consideration**" means the amount to be paid by BDO set forth in the Confidentiality Agreement, excluding the amount payable for the costs of the arrangement under the CCAA.

12. "**BIA**" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

13. "**Business Day**" means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Montreal, Québec, Canada.

14. "**CCAA**" means the *Companies' Creditors Arrangement Act*, R.S.C. c. C-36, as amended.

15. "**CCAA Approval Order**" means an order in the CCAA Proceedings which shall, among other things: (i) approve, sanction and/or confirm the Plan; (ii) authorize the Parties to undertake the settlement and the transactions contemplated by the Plan; and (iii) provide for the bar of Claims and the Injunction.

16. "**CCAA Court**" means the Superior Court of Québec (Commercial Division), sitting as a court designated pursuant to the CCAA.

17. "**CCAA Filing Date**" means the date of the Initial Order.

18. "**CCAA Proceedings**" means the case filed in CCAA Court by the Applicant.

19. "**Claim**" means past, present and future claims, causes of action, obligations, rights, suits, judgments, applications, remedies, interests, actions, liabilities, demands, duties, tax, injuries, damages, expenses, fees, or costs of whatever kind or nature (including attorney's fees and expenses), whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or matured, liquidated or unliquidated, whether delict, quasi-delict, in tort, contract, extra-contractual responsibility or otherwise, whether statutory, at common law, civil law, public law or in equity, regardless of the legal theory (i) arising out of, based upon, or connected to, in whole or in part, directly or indirectly, whether through a direct claim, cross-claim, third-party claim, commodity or income tax claim, warranty claim, recursory claim, indemnification claim, subrogation claim, forced intervention, class action or otherwise, from (a) the Class Action, including any claims for investment loss in capital and interest related to the Promissory Notes or otherwise related directly or indirectly to one or more of the Debtors or the audited or unaudited, consolidated or unconsolidated financial statements of any of them; or (b) the Existing Agreements, or (ii) that would otherwise constitute a claim by or against the Debtors, provable in bankruptcy under the BIA, when the Debtors became subject to the CCAA Proceedings. This definition of Claim includes, but is not limited to, claims for breach of contract, breach of the

implied covenant of good faith and fair dealing, duty to inform, statutory or regulatory violations, for indemnity or contribution, or punitive, exemplary or extra-contractual damages of any type, as may be limited herein.

20. “**Claim Appeal Motion**” means, with respect to any Claim, the motion which shall be served upon the Monitor, Applicant’s Counsel and Class Counsel and filed in Court by the Creditor disputing a Notice of Revision or Notice of Rejection of the Creditor’s Proof of Claim and setting out the reasons for the appeal.

21. “**Claims Bar Date**” has the meaning ascribed thereto in the Claims Bar Date section of the Claims and Meeting Order.

22. “**Claims Procedure**” means the procedure established for the filing of Proof of Claims in the CCAA Proceedings pursuant to the Claims Procedure section of the Claims and Meeting Order.

23. “**Claims and Meeting Order**” means the order rendered by the CCAA Court approving a claims process, a claims bar date and a meeting of creditors, as such order may be amended, restated or varied from time to time.

24. “**Claims Resolution Process**” means the provisions of the Claims and Meeting Order establishing the procedure for determining the validity and quantum of any disputed Claims for the purpose of the Plan.

25. “**Class**” or “**Class Member”** means “Toutes les personnes qui en date du 9 novembre 2005 étaient propriétaires de billets à ordre émis par les sociétés Corporation Mount Real, Gestion MRACS Ltée, Investissements Real Vest Ltée et Corporation Real Assurance Acceptation” who did not exclude themselves within the prescribed delays.

26. “**Class Action**” means the class action commenced on or about November 8, 2008, before the Class Action Court, under court file 500-06-000453-080, including all subsequent amendments and all proceedings in this Court file, whether before or after the action was authorized to proceed as a class action.

27. “**Class Action Claims**” means Claims of the members of the Class that are accepted under the Plan.

28. “**Class Action Court**” means the Superior Court of Québec (Class Action Division) presided by the Honourable Jean-François Buffoni, J.S.C.

29. “**Class Action Order**” means the order issued in the Class Action (i) confirming that the CCAA Approval Order shall be binding and giving full effect against the parties designated in and part of the Class Action, whether as a class representative, class member, named defendant/respondent or mis-en-cause; (ii) removing the allegations and conclusions against the Settling Defendants; and (iii) terminating the Class Action against the Settling Defendants without costs.

30. “**Class Counsel**” means Belleau Lapointe and Trudel, Johnston & Lespérance as counsel retained by Class Plaintiff in the Class Action.

31. “**Class Counsel Fees**” means, in the respective proportions indicated in writing by Class Counsel to the Monitor, a total amount of fees equal to twenty per cent (20%) of the Settling Defendants’ Consideration received by the Monitor, plus the Class Counsel’s disbursements relating to the Class Action and the CCAA Proceedings, plus applicable taxes thereon, as established in invoices addressed to the Class Plaintiff in a form acceptable to the Monitor.

32. “**Class Plaintiff**” means Andrée Ménard, in her capacity as representative of the Class.

33. “**Confidentiality Agreement**” means the agreement signed between Deloitte, BDO, SLF, B2B and Class Plaintiff, with the intervention of the Liquidator, RCGT and persons and counsel present during the case settlement conference presided by the Honourable Louis Lacoursière, J.S.C. which was held during the week of July 11, 2016, dated as of July 15, 2016.

34. “**Creditors**” means collectively all Persons holding any Claim against: (i) MRC, MRACS, Real Vest or RAAC; (ii) the Settling Defendants; and/or (iii) any of the Released Parties and “**Creditor**” means any one of them.

35. “**Creditors’ Instructions**” means the instructions for Creditors explaining how to file a Proof of Claim.

36. “**Creditors' List**” means a list, prepared by the Monitor and filed with the CCAA Court, of all Known Creditors, as may be updated from time to time.

37. “**Debtors**” or “**Debtor Companies**” means MRC, MRACS, Real Vest and RAAC.

38. “**Deloitte**” means Deloitte LLP, a limited partnership with a place of business at 1190 Avenue des Canadiens-de-Montréal, Suite 500, Montreal, Québec H3B 0M7.

39. “**Deloitte Consideration**” means the amount to be paid by Deloitte set forth in the Confidentiality Agreement.

40. “**Distribution Date**” means the date or dates from time to time set in accordance with the provisions of the Plan to effect distributions in respect of the Proven Claims.

41. “**Effective Time**” means 8:00 a.m. (Montreal time) on the Plan Implementation Date.

42. “**Effective Time of the Initial Order**”means 12:01 a.m. (Montreal time), on the date of the Initial Order.

43. “**Execution Date**” means the first day upon which all Parties have executed the Plan Support Agreement and delivered a copy to counsel for the other Parties.

44. "**Existing Agreements**" means any and all contracts or agreements between the Debtors and/or the Individual Defendants and/or any of the Creditors on the one hand, and any of the Released Parties, on the other hand, except if such contracts or agreements are between a Creditor and a Released Party and are completely unrelated to: (i) the subject matter of the Class Action; or ii) the Debtors and/or the Individual Defendants and/or their affiliates, subsidiaries, predecessors, successors, affiliates of their predecessors and successors, shareholders, directors, officers, agents, employees, partners or members.

45. "**FAAC**" means Fonds d'aide aux actions collectives.

46. "**Final Order**" means an order of the Class Action Court or the CCAA Court or any and all courts with jurisdiction to consider any appeals, that is no longer subject to further appeals, either because the time to appeal has expired without an appeal being filed, or because it has been affirmed, and that has not been challenged by inter alia an application for certiorari, retractation, modification or rectification of the judgment.

47. "**Funds for Distribution**" means the full net amount of capital of the Settlement Consideration and Bankruptcy Consideration received by the Monitor for distribution to Creditors, without any deduction whatsoever for professional fees and disbursements related to the CCAA Proceedings, but after deduction of the payment by the Monitor to Class Counsel of the Class Counsel Fees.

48. "**Individual Defendants**" means, Paul D'Andrea, Lino P. Matteo and the mis en causes Laurence Henry, Lowell Holden, Joseph Pettinicchio, and Andris Spura.

49. "**Initial Application**" means the application filed by the Trustee seeking an initial order under the CCAA with respect to the Debtor Companies.

50. "**Initial Order**" means the order issued by the CCAA Court, on the Initial Application of the Applicant, authorizing the filing of the CCAA Proceedings and appointing the Monitor, as may be amended.

51. "**Injunction**" means an order by the CCAA Court acceptable to the Settling Defendants permanently releasing and enjoining the enforcement, prosecution, continuation or commencement of any Claim that any Person, including, without limitation, any Creditor, holds or asserts or may in the future hold or assert against the Released Parties. The Injunction shall provide that any and all Claims against the Released Parties will be permanently and automatically compromised, discharged and extinguished, that all Persons, including, without limitation, all Creditors, whether or not consensually, shall be deemed to have granted full, final and definitive releases of any and all Claims to the Released Parties and shall be permanently and forever barred, estopped, stayed and enjoined from (i) pursuing any Claim, directly or indirectly against the Released Parties; (ii) continuing or commencing, directly or indirectly, any action or

other proceeding with respect to any Claim against the Released Parties; (iii) seeking the enforcement, attachment, collection or recovery of any judgment, award, decree, or order against the Released Parties or the property of the Released Parties with respect to any Claim; (iv) creating, perfecting, or enforcing any encumbrance of any kind against the Released Parties or the property of the Released Parties with respect to any Claim; and (v) asserting any right of setoff, subrogation, indemnification, recursory right, warranty, contribution or recoupment of any kind against any obligations due to or by the Released Parties with respect to any Claim.

52. “**Known Creditor**” means a Creditor listed on the list filed by the Monitor at the hearing for the Claims and Meeting Order, as may be updated from time to time.

53. “**Liquidator**” means Ernst & Young Inc., a Canadian corporation having a place of business at 800 René-Lévesque Boulevard West, Suite 1900, Montreal, Quebec H3B 1X9, acting in its capacity as court appointed liquidator of Penson Financial Services Canada Inc.

54. “**Meeting of Creditors**” means a meeting or meetings of the Creditors to consider and vote on the Plan held pursuant to the Claims and Meeting Order and includes any meeting or meetings resulting from the adjournment thereof.

55. “**Monitor**” means Raymond Chabot Inc. (represented by Mr. Jean Gagnon, CPA, CA, CIRP, SAI), solely in its capacity as monitor in the CCAA Proceedings, or such other entity as may be approved by the CCAA Court in the future to serve in such capacity in the CCAA Proceedings.

56. “**MRACS**” means MRACS Ltée / Gestion MRACS Ltd. and its predecessors and successors.

57. “**MRC**” means Corporation Mount Real/Mount Real Corporation and its predecessors and successors.

58. “**Net Capital**” means the capital initially invested by a Class Member, without any interest thereon, less any amount paid to the Class Member.

59. “**Notice to Creditors**” means the notice of the Claims and Meeting Order to be published on the Website on the Publication Date, which shall set out the Claims Procedure, Claims Bar Date, Claims Resolution Process, the notice of the Meeting of Creditors, the notice of the application for Court approval of the Plan and the Creditors’ Instructions, being substantially in the form of Schedule “B” to the Claims and Meeting Order.

60. “**Notice of Rejection**” means the notice informing a Creditor that the Monitor, in consultation with Class Counsel, have determined that the Creditor’s Claim is deemed or is presumed rejected and setting out the reasons for rejection.

61. "**Notice of Revision**" means the notice informing a Creditor that the Monitor, in consultation with Class Counsel, have revised all or part of such Creditor's Claim set out in its Proof of Claim and setting out the reasons for revision.

62. "**Ordinary Creditors**" means Persons holding Ordinary Claims.

63. "**Ordinary Claims**" means Claims in the CCAA Proceedings that are: i) filed as Ordinary Claims with the Monitor subject to being accepted as Proven Claims under the Plan; ii) proof of claims previously filed in the Bankruptcies with the Trustee, subject to being accepted as Proven Claims under the Plan; and iii) Class Actions Claims filed with the Monitor which are concurrently deemed filed as Ordinary Claims for the same amount.

64. "**Parties**" means the Trustee (in its capacity as a trustee to the Bankruptcies and Monitor), the Class Plaintiff (in her capacity as representative of the Class) and the Settling Defendants.

65. "**Penson**" means Penson Financial Services Canada Inc.

66. "**Penson Agreement**" means the agreement entered into on October 3 and 5, 2016 between the Class Plaintiff and the Liquidator and homologated by the court in the liquidation proceedings of Penson on October 18, 2016.

67. "**Penson Consideration**" means the amount to be paid by the Liquidator on behalf of Penson set forth in the Penson Agreement.

68. "**Person**" means and includes a natural person or persons, a group of natural persons acting as individuals, a group of natural individuals acting in collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, partnership, limited liability company or limited partnership, a proprietorship, joint venture, trust, legal representative, or any other unincorporated association, business organization or enterprise, any government entity and any successor in interest, heir, executor, administrator, trustee, trustee in bankruptcy (including the Trustee), or receiver of any such person or entity.

69. "**Plan**" means the plan of compromise and arrangement filed with respect to the Debtors in the CCAA Proceedings, including any amendment thereto if such amendment is agreed in writing to by all of the Parties to the Plan Support Agreement.

70. "**Plan Implementation Date**" means the Business Day on which the Monitor has filed with the CCAA Court the certificate contemplated in the Plan.

71. "**Plan Support Agreement**" means the Plan Support and Settlement Agreement entered into among the Settling Defendants, the Trustee and the Class Plaintiff on the Execution Date, and as the context requires, includes the Confidentiality Agreement and the Penson Agreement.

72. “**Proceedings**” means the Bankruptcy and the CCAA Proceedings.

73. “**Promissory Notes**” means promissory notes allegedly issued and/or guaranteed by MRC and its affiliated or related or formerly affiliated or related entities MRACS, Real Vest and RAAC from 1993 to November 2005. For greater certainty, the notes issued by any other entity are expressly excluded from this definition.

74. “**Proof of Claim**” means the forms of Proof of Claim for Ordinary Creditors and Class Members as approved by the Claims and Meeting Order.

75. **“Property**” means all the Debtor Companies’ present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof.

76. “**Proven Claims**” means a Claim finally determined, settled or accepted for voting and distribution purposes in accordance with the provisions of the Plan or the Claims Resolution Process, in the applicable category or categories as an Ordinary Claim and/or a Class Action Claim.

77. "**Publication Date**" means the date on which the publication of the Notice to Creditors on the Website has been completed.

78. “**RAAC**” means Corporation Real Assurance Acceptation and its predecessors and successors.

79. “**Raymond Chabot Inc.”** or “**RCGT**” means Raymond Chabot Inc. in such capacity of Monitor or Trustee as required by the context.

80. “**Real Vest**” means Real Vest Investments Ltd. and its predecessors and successors.

81. “**Related Released Parties**” means all of the Persons who are Released Parties in relation to a particular Settling Defendant.

82. “**Released Parties**” means the Settling Defendants, their affiliates, subsidiaries, predecessors, successors, affiliates of their predecessors and successors, and each of their shareholders, directors, officers, agents, employees, partners, members, legal counsel, experts, consultants, advisors and/or insurers and includes Persons who have a financial interest in, perform services for, or have commercial dealings with one of the Released Parties.

83. “**Representation Order**” means the order to be rendered on the CCAA Filing Date in the CCAA Proceedings by the CCAA Court appointing, as representatives of the class members designated in the Class Action, the Class Plaintiff, represented by the Class Counsel, to further act on behalf of the Class before the CCAA Court in the context of the CCAA Proceedings.

84. “**Settlement Consideration**” means, subject to the terms of the plan Support Agreement, the aggregate sum of no less than $43,025,000 to be delivered by the Settling Defendants in their respective proportions

pursuant to Section 2 of the Confidentiality Agreement (excluding the amounts payable by BDO and SLF for the costs of the arrangement under the CCAA) and the Penson Agreement, plus the Bankruptcy Consideration.

85. "**Settling Defendants**" means B2B, the Liquidator on behalf of Penson, Deloitte, BDO and SLF.

86. "**Settling Defendants' Consideration**" means the aggregate sum of no less than $43,025,000 to be delivered by the Settling Defendants in their respective proportions pursuant to the Plan Support Agreement.

87. "**SLF**" means Schwartz Levitsky Feldman LLP, a limited partnership with a place of business at 1980 Sherbrooke Street West, 10th Floor, Montreal, Québec H3H 1E8.

88. "**SLF Consideration**" means the amount to be paid by SLF set forth in the Confidentiality Agreement, excluding the amount payable for the costs of the arrangement under the CCAA.

89. "**Stay Period**" means the period of the stay of proceedings ordered in the Initial Order, as may be extended by the Court from time to time.

90. "**Trustee**" means Raymond Chabot Inc., a Québec company having a place of business at 600 De La Gauchetière Street West, Suite 2000, Montréal, Québec, H3B 4L8 , solely in its capacity as trustee appointed in the Bankruptcies of the Debtors.

91. "**Unaffected Claims**" or "Unaffected Claim" has the meaning given to that term in the Plan.

92. "**Website**" means the website maintained by the Monitor in respect of the CCAA Proceedings pursuant to the Initial Order at the web address listed in the Claims and Meeting Order.

No.: 500-06-000453-080

(CLASS ACTION DIVISION)
SUPERIOR COURT
DISTRICT OF MONTRÉAL

ANDRÉE MÉNARD

Class Plaintff

v.

LINO P. MATTEO AND AL

Defendants

and

ERNST & YOUNG INC. IN THE CAPACITY OF LIQUIDATOR OR SERVICE FINANCIERS PENSON CANADA INC.

Defendant in continuance of suit

and

JOSEPH PETTINICCHIO
LAURENCE HENRY
ANDRIS SPURA
LOWELL HOLDEN

Mis en cause

FONDS D'AIDE AUX ACTIONS COLLECTIVES

Mis en cause

Notre dossier: 1281-1 BT 1415

APPLICATION FOR A CLASS ACTION SETTLEMENT ORDER AS PER THE COURT APPROVED PLAN OF COMPROMISE AND ARRANGEMENT

(Articles 585, 590 and 593 C.C.P., and section 17 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C 36)

ORIGINAL

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